

**ATTACHMENT 2:
INDEPENDENT CONSULTANT AGREEMENT**

This agreement is made effective as of October 15, 2013, by and between **McCloud Community Services District** of 220 W. Minnesota Avenue, McCloud, CA 96057 and **NLine Energy, Inc.** of 5170 Golden Foothill Parkway, El Dorado Hills, CA 95762

In this Agreement, **McCloud Community Services District** shall be referred to as "**District**" and **NLine Energy, Inc.** shall be referred to as "**Consultant**." In consideration of their mutual promises made herein the parties hereto agree as follows:

1. **TERM OF AGREEMENT.** The term of the Agreement shall begin on October 15, 2013 and terminate on February 15, 2014 or 120 days from contract signing, whichever date is later.
2. **FORCE MAJEURE.** Neither party shall hold the other responsible for the effects of acts occurring beyond their control; e.g. war, riots, strikes, natural disasters, etc.
3. **DESCRIPTION OF SERVICES.** Beginning immediately, **Consultant** will provide the following services as described in attached Exhibit A. At the conclusion of the project, **Consultant** will submit in both digital format and hard copies any and all documents created and submitted in connection with this project in formats consistent with District capabilities.
4. **PERFORMANCE OF SERVICES.** The services to be performed by **Consultant** shall be in conformance with the Scope of Work as shown in Exhibit A, which is attached hereto and made a part hereof by reference.

Consultant may, at its sole cost and expense, employ such competent and qualified independent professional associates, subcontractors, and contractors as it deems necessary to perform each such assignment provided, however, **Consultant** shall not subcontract any of the work to be performed without the prior written consent of **District**. **Consultant** agrees to pay such consultant, subcontractor, or professional associates in a timely manner and hold District, its Directors, officers, agents, and employees harmless.

5. **PAYMENT.** **District** will pay **Consultant's** properly executed and approved invoice for work, labor, materials, equipment, and services within thirty- (30-) days following receipt of the invoice. Payment will be made in accordance with the attached payment schedule described in Exhibit A. Invoices shall not be submitted in advance and shall not be dated earlier than three (3) days prior to submittal.

In the event of termination, the payment of monies due **Consultant** for work performed prior to the effective date of such termination shall be paid after receipt of an invoice as provided in this Agreement.

6. **OBLIGATIONS OF CONSULTANT.** **Consultant** agrees to perform all assigned tasks and services in accordance with the terms and conditions of this Agreement and those specified in the **Consultant's** Scope of Work. Except as otherwise provided, **Consultant** will supply all personnel and equipment required to perform the assigned services.

It is understood by the parties that **Consultant** is an independent **Consultant** with respect to **District** and not an employee of **District**. The **District** will not provide fringe benefits, including health insurance, paid vacation, or any other employee benefits, for the **Consultant**. **Consultant** hereby agrees to be solely responsible for the health and safety of its employees and agents in performing the tasks and services assigned by **District**. **Consultant** hereby further covenants and agrees to:

- a. Obtain and maintain a commercial general liability policy in an amount of not less than \$1,000,000, naming **District** as an additional insured. For all purposes pertaining to this agreement, **Consultant's** commercial general liability policy shall be the primary policy and **District's** liability policy shall be secondary. Such policy shall be provided by **Consultant** to **District** prior to **Consultant's** commencement of work and services pursuant to this agreement.
- b. Obtain and maintain a policy of professional liability insurance in a minimum amount of \$1,000,000, to cover any negligent acts or omissions committed by **Consultant** and its employees in the performance of any services for the **District**;
- c. Comply with applicable local, state, and federal laws, rules, and regulations in effect at the time services are provided; and
- d. Provide worker's compensation insurance for **Consultant's** employees. Evidence of all insurance coverage required herein, including but not limited to copies of policies, shall be provided to **District** prior to beginning work. Such policies shall provide that they shall not be canceled nor the scope or amount of coverage reduced without 30 days prior written notice to the **District**. Cancellation or reduction in amounts of coverage of insurance policies without **District's** prior written consent shall constitute a material breach of this agreement.

Consultant hereby covenants and agrees that **District**, its officers, and employees shall not be liable for any claims, liabilities, penalties, fines, or any damage to property, whether real or personal, nor for any personal injury or

death caused by, or resulting from, or claimed to have been caused by or resulting from, any negligent act or omission of **Consultant** pursuant to this Agreement, unless the liability or claim is proximately caused by **District's** negligent acts or omissions. **Consultant** shall indemnify and hold harmless the **District**, its Directors, officers, agents, and employees from any and all claims, actions, or causes of action, including attorneys fees and expenses sustained by **District** by reason of any claim asserted by any third person for loss or damages, which are alleged to have arisen out of the work and services covered in this agreement.

In the event **Consultant** is required to prepare plans, drawings, specifications, and/or estimates, the same shall be certified and stamped by a registered civil engineer in the State of California and shall conform to applicable local, state, and federal laws, rules, and regulations.

Consultant hereby specifically represents and warrants to **District** that the services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily applicable to an experienced and competent professional. Further, **Consultant** represents and warrants that the individual signing this Agreement on behalf of **Consultant** has the full authority to bind **Consultant** to this Agreement.

Consultant's opinions of probable construction cost provided for herein are to be made on the basis of **Consultant's** experience and qualifications and represent **Consultant's** best judgment as an experienced and qualified professional and are not to be construed as a warranty or guarantee.

7. **OBLIGATIONS OF DISTRICT.** The **District** agrees to comply with all reasonable requests of **Consultant** necessary to the performance of **Consultant's** duties under this Agreement.

CONFIDENTIALITY. NLine Energy shall not disclose to any person, entity or agency any information, whether developed by NLine Energy or given to NLine Energy by the District. If, during the term of this Agreement, it becomes necessary for Consultant to provide proprietary information (which Consultant designates as confidential) to the District, District agrees that it will not disclose such information to any other person, entity or agency and that it will not be used for any purpose other than the performance of the Consultant's services described herein.

OWNERSHIP OF INTELLECTUAL PROPERTY. The District acknowledges that all Intellectual Property rights, whether developed by or for Consultant prior to or after the date of this agreement, are and shall remain the sole and exclusive property of Consultant and/or its third party licensors.

8. **ADDITIONAL SERVICES, CHANGES, AND DELETIONS.** During the term of this Agreement, **District** may from time to time, and without affecting the validity of this

Agreement, order changes, deletions, and additional services by the issuance of written Change Orders authorized and approved by the **District** with the concurrence of the **Consultant**.

In the event **Consultant** performs additional or different tasks or services other than those described in the **District's** request, **Consultant's** Scope of Work, or authorized Change Order without the prior written approval of **District**, **Consultant** shall not be compensated for such services.

Consultant shall promptly notify **District** as soon as reasonably practical when **Consultant** gains knowledge of a condition, event, or accumulation of events, which may affect the scope and/or cost of services to be provided pursuant to this Agreement. All proposed changes, modifications, deletions, and/or requests for additional services shall be requested in writing by **Consultant** for the prior review and written approval by the **District**.

9. **ASSIGNMENT.** **Consultant's** obligations under this Agreement may not be assigned or transferred to another person, firm, or entity at any time without prior written consent of the **District**.
10. **NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

DISTRICT: Wayne Grigsby, General Manager
McCloud Community Services District
220 W. Minnesota Avenue
McCloud, CA 96057

CONSULTANT: Matthew Swindle, CEO
NLINE ENERGY, INC.
5170 Golden Foothill Parkway
El Dorado Hills, CA 95762

Either party may change addresses from time to time, by providing written notice to the other in the manner set forth above.

11. **AMENDMENT.** This Agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.
12. **SEVERABILITY.** Should any provision of this Agreement prove to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. Should a court find any provision of this Agreement invalid or unenforceable, said provision shall be deemed to be written, construed, and enforceable as so limited.

13. **ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be resolved by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having competent jurisdiction thereof.
14. **WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
15. **ATTORNEYS' FEES.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
16. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California.
17. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

By: Mc Swindle

Matthew Swindle, CEO
NLine Energy, Inc.

Date: October 15, 2013

By: Wayne Grigsby

Wayne Grigsby, General Manager
McCloud Community Services District

Date: 10 / 17 / 2013

Attachments: Exhibit A: Scope of Work and Payment Schedule

Exhibit A: Scope of Services and Payment Schedule

Hydroelectric Station Preliminary Analysis

1. Project Overview

McCloud Community Services District ("District") seeks to engage the services of NLine Energy to provide a Preliminary Analysis for a proposed Hydroelectric Station at Intake Springs.

2. Project Goals

The goal of this Preliminary Analysis will be to answer the question if the proposed hydroelectric station(s) possesses the technical, financial, regulatory and environmental attributes to warrant further development. This scope of services includes:

- Task 1: Data Collection and Assessment
- Task 2: Estimated Hydraulic Power and Generation Profile
- Task 3: Technology Availability and Estimate of Annual Energy Production
- Task 4: Interconnection Requirements
- Task 5: Environmental Requirements
- Task 6: Regulatory Requirements
- Task 7: Design Considerations and Estimates of Project Cost
- Task 8: Revenue Estimates and Pro Formas
- Task 9: Contracting and Finance Options
- Task 10: Project Timeline
- Task 11: Recommendations

3. Task Detail:

3.1.Task 1: Data Collection and Assessment – NLine Energy, with District staff assistance, will request data, reports and documents to build a repository of data for the project. These data inputs will be assessed as the baseline for the Preliminary Analysis. These data requests include:

- 3.1.1. Determination of initial powerhouse citing
- 3.1.2. Water-flow Delivery Data for Intake Springs
- 3.1.3. Verification of Available Head through available pressure data and verification through hydraulic friction loss calculation(s)
- 3.1.4. Projections from District staff on future development and associated flows

3.2.Task 2: Estimated Hydraulic Power and Generation Profile – Based on available flow, head an citing, an annual generation profile will be built, which will offer an estimate of total available hydraulic power output based on water delivery year.

3.3.Task 3: Technology Availability and Estimate of Annual Energy Production

– Based on current turbine/generator technology available for the site parameters, a technology matrix will be developed that details the technology, operating range, operating efficiency and estimated power output.

3.4.Task 4: Interconnection Requirements – NLine Energy will engage Pacific Power to determine existing electric utility line information for closest point of interconnection, as well as detail interconnection requirements, potential costs, and timelines.

3.5.Task 5: Environmental Requirements – An initial biological and cultural analysis will be conducted to determine the likely federal, state and local resource agencies that will be consulted and/or affected by this proposed project. A detailed report and analysis will overview the specific findings of the database search(es), agencies affected and likely California Environmental Quality Act permitting path recommended for project development.

3.6.Task 6: Regulatory Requirements - This task will offer an overview of the requirements necessary to comply with various federal, state and local regulatory requirements, to include costs and timelines. Based on the source of water for the project, consultation with the Federal Energy Regulatory Commission is not expected. NLine Energy will review applicable California regulations to determine the ability of the District to file a protest letter requesting the Feed-in Tariff pricing for the project.

3.7.Task 7: Design Considerations and Estimate of Project Costs – A preliminary estimate of project costs will be provided offering estimates to include:

- 3.7.1. Turbine/Generator
- 3.7.2. Electrical Systems
- 3.7.3. Control Systems
- 3.7.4. Protection Systems
- 3.7.5. Structures
- 3.7.6. Piping/Fittings/Valves
- 3.7.7. Civil (Materials, Labor)
- 3.7.8. Other Costs
 - 3.7.8.1. Engineering
 - 3.7.8.2. Project Management
 - 3.7.8.3. Construction Management
 - 3.7.8.4. Permitting
 - 3.7.8.5. Interconnection
 - 3.7.8.6. Administrative
 - 3.7.8.7. Legal

- 3.7.8.8. Finance
- 3.7.8.9. Developer Fees
- 3.7.8.10. Contingencies

3.8. Task 8: Revenue Estimates and Pro Forma – Based upon hydroelectric generation potential of each technology option, a revenue estimate will be produced using the Pacific Power tariff. An initial pro forma will be developed detailing the common assumptions when financing small hydroelectric projects to include interest rates, rates of escalation, maintenance costs, net present value, etc...

3.9. Task 9: Contracting, Finance and Subsidy Options – Finance options will be described to include District-funded, NLine Energy-funded and Third-Party funded projects. Additionally, NLine Energy will document any potential grants and subsidies applicable for this project.

3.10. Task 10: Project Timeline – An initial project timeline will detail the major milestones and associated timelines.

3.11. Task 11: Recommendations – Given various inputs from this analysis, we will identify opportunities and threats to the project.

4. Deliverable

A written "Preliminary Analysis" report will be prepared in electronic and hard copy format for the District. This report will include all the tasks noted above and will include recommendations on whether further evaluation of this site is warranted.

5. Project Travel and Expenses

One trip including all travel and expenses to the sites and the District headquarters are included in the Preliminary Analysis cost. If, at the District's request, travel is warranted, the District will reimburse NLine Energy for reasonable travel and expenses.

6. Preliminary Analysis Cost

The Preliminary Analysis will be charged at a flat fee of \$25,000 upon completion of the tasks and delivery of the Preliminary Analysis report.

7. Project Schedule

Tasks 1-11: Completion on or before February 15, 2014 or 120 days from contract signing, whichever date is later.